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# ANSWERS

NATIONAL LIBRARY OF SCOTLAND

*In behalf of the VVellwiſhers to the proſperity of the Nation, in matters of Trade,*
*VVHY*

**The *frivolous Points of alledged Privat* Right *obtruded by the* Town *of* Edinburgh *ſhould not hinder the paſſing of the Act for a Communication of Trade, to the Inhabitants of* Leith.**

AS the ſeveral Points of great Advantage to Trade over all the Nation, alſwell as thoſe parts next adjacent to *Leith*, were ſufficiently held furth in the Reaſons offered with the Overture, for ane Act of Communication of Trade to the Town and Brugh of Barronie of *Leith*. So does the Acts of Parliament *Anno* 1672. and *Anno* 1693. Juſtifie the Legality of the ſaid Overture beyond all Exception that can be founded on the former Old Laws, before the 1672. Depriving Brughs of Barronie and Regality of all manner of Trade that the Royal Burrows hade then, and before wrongouſly Monopolized: For the Words of the ſaid Act 1672. are, *That the former Laws anent the Priviledges of Royal Burrows were highly prejudicial to the common Intereſt and Good of the Kingdom, as extending the Priviledges of Royal Borrows far beyond their ancient Rights, and applying the Priviledges of Burrows in general, ſuch as Taping, Retailing,* &c. *To Royal Burrows only to the Prejudice of Brughs of Regality and Barronie: For remead whereof, the ſaid Act* Anno 1672. *Declares Burghs of Barronie,* &c. *to have Right, not only to Tap and Retail, But to Export all the Native Product of the Kingdom, and Import the ſpecial Commodities mentioned in the Act.* And ſo expreſly corrects the Abuſes committed by the Royal Burrows on pretext of the ſaid Old Laws, Likeas the Act of Parliament *anno* 1693. anent the Communication of Trade, of whatſoever kind, to all that are willing to bear a Proportionable part of the Ceſs of the Royal Burrows ſufficiently, Juſtifies the Communication propoſed in behalf of the Town of *Leith*, They being in Contemplation thereof, alwayes ready to bear a Proportionable Burden.

The Repreſentation does make a great miſtery of *Edinburghs private Rights*: As to which, before making particular Anſwers thereunto, It is to be Conſidered in the *generall*, That all theſe Rights ſignifie nothing. Becauſe 1*o*, The Caſe is not of Rights or Decreets betwixt *private parties*: Or where the *publick Intereſt* is not concerned. But the Caſe is anent *publick Rights*, betwixt two *publick Societies*, where the *publick Trade* of the Nation is Intreſted. In which Caſe, there are many *Precedents* of the Parliaments interpoſing without reſpect to particular Rights. So the Parliament, by ſeveral Old Acts did take away *Cruves* and *Yares*, did forbid the taking of *Black Fiſh* and *Smolts*, did prohibite *huunting and haulking*, except in the time and manner preſcribed, *&c.* Without reſpect to any *Infeftments, or other Rights or Poſſeſions*, which would have carried the uſe of the things; prior to the Acts reſtricting the ſamen. And thus in partcular Caſe of Trade. The Brughs Royal had by their Charters and Poſſeſſion, an unqueſtionable Right of *Trading excluſive of all others*; and yet by the Act 1672. That Right is taken from them, and Conferred in great meaſure, on the Brughs of Barronie and Regality. And without multiplying inſtances, it is known how there is preſently preſented an Act for *Conjoyning Chyrurgery and Pharmacie*, tho they be ſeparated by expreſs Decreets of the Lords of Seſſion, and there are ſuch *abuſes and oppreſſions* exerced againſt the Town of *Leith* by *Edinburgh*: that upon that head, th° there were no other *Edinburgh deſerves* to be *mulcted* in being deprived (ſuppoſe it had it) of a part of that *excluſive power*, by which it does tyranize over *Leith*, by debarring them from Trading. Hence 1. No Arguments drawn from Decreets betwixt *privat Parties* are any ways to the purpoſe in the preſent Caſe. And no Condeſcendencies or Rights prior to the Acts 1672, 1690. and 1693 can debar *Leith* from the Benefits of theſe Acts. Becauſe, in the firſt place, *Leith* was a Burgh of Barrony *Prior* to theſe Reſtrictions, and thereby their *Jus quæſitum* could not be taken away either by any Deed of the *Superiour*, or *Surreptitious Charters* from the King And, in the next place, ſuch Reſtrictions are to be ſtrictly Interpreted *of any ſmall Trade which Leith could Claim by the Laws then ſtanding*: but can never be undsrſtood of *Supervenient Rights* to Trade which are granted by the new Laws Poſterior to theſe Reſtrictions. Eſpecially conſidering that theſe Reſtrictions *does not expreſly exclude* any benefite which might accrew by *Supervenient* Laws.

And whereas it is pretended for *Edinburgh* that the Priviledges which the new Acts grant to Brughs of Barrony, are *given to the Barron*; and he may Communicate the ſame to the Burgh, or not, as he thinks fit. Its Anſwered, That nothing can be more abſurd; For 1*o*. Its expreſly contrary to the *Words of the Acts*, which give theſe Priviledges to the *Burghs of Barrony*; and not (perſonally) to the *Barrons* only, 2. It is plainly contrary to *common ſenſe*. For as the Barrons themſelves by their Repreſentatives in Parliament were Voters to theſe priviledges in Favours *of their own Burghs*; So the reaſon thereof was the Advantage and Diffuſion *of Trade*: Which deſign could not be ſerved any other ways than by Communication thereof *to theſe Societies*. But 3. As a demonſtration of the emptineſs of this notion; *other Subjects* who ſhall be content to undergo a part of the Burrows Taxt Roll; have the Benefit of Trade, ſo that the Inhabitants of *Leith*, *qua Subjects*, can Claim it.

But that the Parliament may ſee more particularly, how the private Rights founded on by *Edinburgh* are taken off; They are earneſtly intreated, for ſo great a publick Good, to conſider the *Special Anſwers* following.

1. *Quoad* King *Robert*'s Charter *anno* 1333, It Entitles *Edinburgh* to no more in *Leith* than the very Harbour and Shoar allanerly, without ſo much as a foot of Ground farder; So that *Edinburgh* wronguonſly lays claim to the Town of *Leith*, as pertaining to them by that Charter.

2. No Reſpect to *Reſtalrig* Superior of *Leith*, his Conceſſion in favours of *Edinburgh*, whereby he renounced all Power of *Leith*'s keeping Hoſtlaries or any kind of Retail: For 1. *Utcunque Reſtalrig*, ſo long as he was Proprietar of the whole Houſes and Diſtrict of *Leith*, he for the fewing out of the ſame to the Inhabitants as his Vaſſals, might have renounced all Priviledge of Trade; Yet after he had ſo fewed out the Ground whereon the Town of *Leith* ſtands; And for which, in Contemplation of the Trade competent to theſe Fews and Inhabitants thereof, he got greater Price then he would have got. For ſo much of any other Ground, he the ſaid *Reſtalrig* as Superior, could not diſpence with, or renounce the Prediarie Right of Trading competent to his Vaſſals the Inhabitants, without their own conſent, more than he could turn them out of the very Property of their Fews. Beſide that, 2. *Reſtalrig's* ſaid Renounciation of Trade relates expreſly to the Law that then was, as appropriating the univerſal Right of Trading to Royal Burrows only, and the Law ſo inducing *Reſtalrig* to renounce, *Eſto* he and his Succeſſors had remained Proprietars of *Leith* to this hour, being taken away be the ſaid Act of Parliament 1672, giving Burghs of Barronie Priviledges of Trade *de novo*; No antecedent Renounciation of Trade, with expreſs relation to the ſaids old Laws, can never Incapacitate *Leith* from bruiking the Benefit of Trade by the ſaid ſuperveening new Law.

3. No Reſpect to King *James* the third's Charter diſcharging Strangers to Houſe in *Leith*, or Mercats to be uſed there, becauſe the ſaid Charter was impetrate, but *periculo petentis*, and never took effect: For it is well known that Strangers did, and do Houſe there, and that near an hundred Years after the ſaid pretended Charter. *Leith* as a Burgh of Barronie, not only uſed Mercats, but had Gifts of the Bailiarie of their Town, granted them by Qneen *Mary*, upon *Reſtalrig* the Superior's Reſignation, for the Town of *Leith*'s behoof.

4. No Reſpect to the old Acts of Parliament, declaring the Priviledges of Trade to be Competent only to Royal Burrows, and particularly the Acts in King *James* the fourth's time, diſcharging Packing and Peiling in *Leith*; For the ſaid Poſtior Act of Parliament *anno* 672, declares the ſaids old Laws to have been highly prejudicial to the Common Intereſt and Good of the Kingdom, in reſtricting the univerſall Priviledge of all kind of Trade to the Royal Burrows only: And for Remeid thereof, declared the Points of Trade competent to Burghs of Barronie and Regalitie, as aforeſaid, whereby by the ſaids old Laws being *in tantum* reſcinded, *Edinburgh* ought not to be heard to plead any thing thereon contrar to the ſaid Act of Parliament *anno* 1672. Nor

5. Our Lat Queen *Maries* Charter to *Edinburgh*, wadsetting to them the Superiority of *Leith*, with *Edinburgh's* acquiring the Reversion of the said Wadset, and thereby becomming Superiors of *Leith* be regarded as a privat Right, excluive of *Leith* from all Trade. Because 1. A Burgh of Barronies Power of Trading is very consistent with its having a Superior, whose duty it is to Govern and Judge their Vassals the Inhabitants of the Burgh of Barronie, but not to destroy their Trade, which is the Inhabitants and Powers of the Burgh their Prediarie and Patrimonial Rights by Law. 2. That the said Right of Superiority being resigned by *Restalrig*, conform to a special Contract betwixt the Queen and the Town of *Leith* for most Onerous Causes in the year 1559: And the Queen having by her Letters of Bailzie to *Leith modo tempore*, and ay and while the Terms of her Contract aforesaid should be fulfilled, to them Hypothicat the Superiority of *Leith*: *Edinburgh's* pos[illegible] of the Superiority from the Queen, was but Surreptitious, and without Consent *Edinburgh* was put in *dole possessi* before taking Seasine on the said Wadset Right, in so far as *Leith*, at the Sight, and in the Hands of multitudes of Notars and Witnesses, Instrumented the very Provost of *Edinburgh*, the time of taking Seasine, as said is; Protesting, for the Safty of *Leith's* Interest, and for Coll, Skeith, and Damnage.

6. No respect to *Edinburgh's* Ratification in Parliament *anno* 1581. of *Restalrigs* Concession and Renunciation aforesaid and Wodset of the Superiority, including the Jurisdiction of Shirrifship over *Leith*; Because Ratifications are but *pericula petentis & nihil juris tribuunt*, but fall with the Rights ratified; so that *Restalrigs* Concessions, being but when he was Superiour, and so *a non habente potestatem*, to dispose on the Inhabitants and Vassals properties; besides that the said Concession mentions the Old severe and New Rescinded Laws, as the Cause thereof, is in the case of a *jubilate exsurge &c.* And the Right of Superiority *per se*, can never preclude the Burgh of Barrony from its predial Right of Trading as aforesaid, and *quoad* the Sheriff-ship. *Leith non facit vim.*

7. No respect to *Edinburghs* Charter from the King *anno* 1636, bearing a *novo dam* of *Leith*, in favours of *Edinburgh*, with an Annexation thereof to the Royalty of *Edinburgh*; But with express Exclusion from Trade, without licence from the Magistrates of *Edinburgh*. Because 1. The said Charter, with all the other pretended Private Rights aforesaid, obtruded be *Edr.* are but the results of *Edr.* Usurpations, by vertue of the old rescinded Laws, & the Annexing of *Leith* to *Edr.* Royalty, as the same is literally conceived, resolves into no more, but a *fictum lemma* reprobat in Law; In so far as by the pretended Annexation to *Edinburgh* Royalty *Edinburgh* there throw pleads a Right of Burdening *Leith* with the Cess of *Edinburgh qua pars* of *Edinburghs* Royalties; But with the same breath denys *Leith* the benefit of Trade, which is the only consideration and ground in Law, why our Royal Borrows bear any Burden of Cess, and why the other Leidges that undertake any part of the Royal Borrows Cess, are allowed to Trade be the Act of Parliament 1672. So that the Clause uniting *Leith* to *Edinburgh's* Royalty, as it stands is not Justifiable by any Law. And therefore the Parliament very justly regulate such an abuse, by allowing *Leith* the benefit of Trade, in contemplation of its said Burden, & that more especially considering that 2. The said very Charter towards the close thereof, erects *Leith de novo* in a Burgh of Barronie without any restraint imaginable, upon the freedom of its Trade, as a Brugh of Barrony: But upon the contrair, allows the same in the amplest Form, which *ipso facto* cuts off all preceeding Restraints on the Freedom of *Leiths* Trade, before the said Year 1636. Especially being there is no mention made in the said Clause of Erection of any Reservation of bygone restraints, so much as by way of Qualification, &c, Nor

8. Does there any right of Debarring *Leith* from Trade, arise to *Edinburgh* by their alledged use and wont of Restraining *Leith* by Sentences, binding them to comply with *Edinburghs* Usurpations, or by obligments granted by some *Leith* Men, for obeying the Sentences mentioned in the Decreet of Suspension *anno* 1615. Because 1. The severe old Laws, thar debarred Burghs of Barrony from Trade, and which were the Foundations of the saids Sentences and Obligments, Seagainst which, *Leith* did always struggle, being taken away by the said new Law *anno* 1672. Induing Burghs of Barronrie, with a priviledge of Trading, *Edinburghs* Right to restrain *Leith* from Trade, on pretence of thole Sentences, Bands and others fall in consequence; And that more especially considering, That 2. The Bonds and Obligments then granted, were but meerly Personal by private Men and so not binding on their singular Successors for less upon the Incorporation of the Town: Besides, That 3. None of thele Sentences Bonds or others, are so much as relieved in the subsequent Erection of *Leith*, in a Burgh of Barrony *anno* 1636, in most ample Form, *ut supra*.

9. It is wrongously pretended for *Edinburgh* that the new Acts of Parliament, Anno 1672. and 1690. Declaring the Priviledges of Burghs of Barrony and Regality as to Trade, cannot derogate from *Edinburghs* Restraints as so many Private Rights left entire by the Acts *sub jure*. For it is manifest from what is above said, that the Town of *Edinburghs* whole Restraints and pretended Rights for to doing did arise directly from the saids old severe Laws, in so far as the pretended Concession from *Restalrig*, expressly mentions these Laws as the cause of his Concession, and their pretended Sentences and Bonds, are also founded thereon, and *quoad* any pretence to the Right of Superiority over *Leith*, the same can never Impower *Edinburgh* as Superiours to *Robb Leith* of their Right of Trading which is their Property also well by their Original Erection in a Barrony as by their late and absolute Erection aforesaid without Reserve. And being no Man can Doubt, but one Parliament may abrogate and rescind the Acts of a former, and thereby in consequence overturn all Pretensions of Right arising from the so rescinded Acts, it will necessarly follow, that the saids Old severe Laws being abrogate, the Acts *sub jure* can never warrand *Edinburghs* Usurpation and Restraints upon *Leith* arising from the saids old Acts.

10. *Edinburgh* wrongfully recurrs to the Exception in the Act 1693. Allowing the exercise of Trade to all except the Inhabitants of the free Ports of Royal Burrows, who are not to Trade but with consent of the Burgh to whom they belong; For it is manifest by *Edinburghs* very antient Charter in King *Roberts* time, and by the Concession made them afterwards by *Restalrig*, that they have no more of *Leith* given them as their free Port, but the Channel of the River only within the Banks by King *Roberts* said Charter, and from the brink of the River to the Foot of the Walls of the Houses on the Shoar, only by *Restalrigs* Concession, without an Inch of Ground farder, save that *Restalrig* allowed them Shand Ene throw his Land to the said Shoar: And consequently, that *Edinburgh* can restrain no Man in *Leith* from Trading, except such as Buy and Sell only within that part of *Leith* which is *Edinburghs* free Port, *viz.* upon the Shoar allanerly, but can never extend their said Restraint to the Houses and Precinct of *Leith* and Inhabitants thereof, why they may not conform to the said Act 1693. brook the Privilege of Trade upon their contributing a proportional part of the Cess and Burden of the Royal Burrows.

11. No respect at all to any pretended Decreet of Declarator, alledged lately obtained by *Edinburgh* against *Leith*, as to *Edinburgh*, its exercising its saids Restraints upon *Leith*. Because 1. Whatever way the said Decreet might have been gotten out by Collusion of some particular persons in *Leith*, yet it is manifest from what is above-said that *Edinburghs* pretensions to such Restraints are of no Weight & can never be sustained for prepondering the Publick & Common Good that would arise to all throw *Leiths* becoming a Trading Port, which some few of the Lodging-monger Neighbours, &c. of *Edinburgh* oppose for their own privat Gain, viz. the heighening of their House Rents, throw their precluding Merchants to dwell in *Leith*, by which means they obstruct the advancement of Trade, and extortionously exact upon all the Leidges that have and must have a resort to *Edinburgh*. Beside that 2. The said pretended Decreet is now upon the matter, laid directly open, and manifestly turned into a meer Claim on the Town of *Edinburghs* part before the Parliament, in so far as they have held forth all the Grounds of the said Decreet, and endeavoured to support the same with all the artifice they can in their penned Representation, but how absolutely insufficient these Grounds are, is left to his Grace and the honourable Estates of Parliament, to consider upon perusal of the above-mentioned Answers thereto.

And therefore, and upon the whole matter, it is humbly hoped the Parliament will prefer the publick and common Weal of the Nation, *quoad* the matter of Trade to any such sham privat Interest as *Edinburgh* lays claim to, on no better ground at the Bottom, than the old severe and old abrogated Acts of Parliament which as the Parliament 1672. has expressly declared to have been highly prejudicial to the common Interest and good of the Kingdom; so it is hoped the Parliament will find the Town of *Edinburghs* said pretentions founded thereon, to be likewise such, and that these pretentions have fallen in consequence of the saids old abrogated Laws, and therefore will pass the Act for communication of Trade, humbly offered in Favours of the Town of *Leith*.